IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 6TH DECEMBER 2006 / 15TH AGRAHAYANA 1928

OP.No. 25872 of 2000(E)

PETITIONER:

MINI THOMAS, H.S.A. (MALAYALAM),
ST. MARY'S GIRLS HIGH SCHOOL, CHERTALA.

BY ADV. SRI.V.P.SUKUMAR
SRI.BOBBY JOHN

RESPONDENTS:
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1. THE MANAGER, CORPORATE MANAGEMENT OF HOLY FAMILY HIGHER SECONDARY SCHOOL AND ST. MARY'S GIRLS HIGH SCHOOL, MUTTOM, CHERTALA.

2. THE DIRECTOR OF HIGHER SECONDARY EDUCATION, HOUSING BOARD BUILDINGS, SANTHI NAGAR, TVM.

3. THE STATE OF KERALA REPRESENTED BY GENERAL EDUCATION (T) DEPARTMENT, SECRETARIATE ANNEX, TVM.

4. SMT. LISSA KURIAN, PART-TIME MALAYALAM LECTURER, HOLY FAMILY HIGHER SECONDARY SCHOOL, CHERTALA.

ADDL.R5: SMT. MARY K.V., HSA (MALAYALAM),
ST. MARY'S GIRLS HIGH SCHOOL, CHERTALA,
(ADDL. R5 IMPLEADED AS PER ORDER ON CMP NO.45322/01 DT.26.9.01)

R1 BY ADV. SRI.V.M.KURIAN
ADDL. R5 BY ADV. SRI.R.KRISHNA RAJ
R4 BY ADV. SRI.KURIAN ANTONY EDASSERY
R2 & R3 BY SHRI BEJOY CHANDRAN, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 06/12/2006, ALONG WITH WPC NO. 25654 OF 2004 & WPC NO. 28941 OF 2006 THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP NO.43538/2000 IN OP 25872/2000

DISMISSED.

6/12/2006 SD/- A.K. BASHEER, JUDGE.

APPENDIX

EXT.P1-TRUE COPY OF THE GO DATED 26.7.2000

EXT.P2-TRUE COPY OF GO DATED 13.5.1998

EXT.P3-TRUE COPY OF CIRCULAR DATED 23.12.99 ISSUED BY DIRECTOR OF HIGHER SECONDARY EDUCATION, TVM.

EXT.P4-TRUE COPY OF APPLICATION DATED 9.7.2000 SUBMITTED BY THE PETITIONER BEOFRE R1

EXT.P5-TRUE COPY OF ORDER DATED 16.8.2000 ISSUED BY R1

EXT.P6-TRUE COPY OF REPRESENTATION DATED 17.8.2000 SUBMITTED BY THE PETITIONER BEFORE R2

EXT.P7-TRUE COPY OF REPRESENTATION DATED DO. BEFORE R3

EXT.P8-TRUE COPY OF GO DATED 25.8.2000

RESPONDENTS' EXTS:

EXT.R1(A)-TRUE COPY OF APPLICATION DATED 1.8.2000 SUBMITTED BY R4 BEFORE R1

EXT.R1(B)-TRUE COPY OF CERTIFICATE DATED 21.12.2002 ISSUED TO R5

EXT.R5(A)-TRUE COPY OF APPLICATION DATED 8.8.2000

EXT.R5(B)-TRUE COPY OF PETITION DATED 22.8.2000 FILED BEFORE R1

// TRUE COPY //

A. K. Basheer, J.

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O.P.NO.25872/2000 &
W.P.(C)Nos.25654/2004 & 28941/2006

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Dated this the 6th day of December, 2006.

JUDGMENT

The post of Higher Secondary School Teacher (Malayalam) in Holy Family Higher Secondary School at Muttam in Cherthala, has remained a hot seat for the last six years. The selection committee constituted by the management selected Smt. Lisa Kurian to the post. She was accordingly appointed. The said appointment has been challenged by Smt. Mini Thomas, the petitioner in O.P.No.25872/2000.

The grievance of the appointee, Smt. Lisa Kurian (petitioner in Writ Petition No.25654/2004) is that her appointment is not being approved despite long passage of time. A further dimension was added to the issue by the entry of Smt. Mary K.V.. into the fray. According to Smt. Mini Thomas and Smt. Mary K.V., the management was not justified in selecting and appointing Smt. Lisa Kurian. I do not propose to deal with the qualifications or the respective merit as projected by them for selection to the post.

When O.P.Nos.25872/2000 and 25654/2004 had come up for further consideration on August 24, 2006, the following order was passed:

> "When these two cases had come up for consideration on August 11, 2006, learned counsel for the parties were heard at length. It was

noticed that there was infraction in the procedure of the selection process in as much as it was not held in terms of Ext.P3 circular which governed the field at that time. Learned counsel for the Manager was queried as to whether the management was prepared to set right the procedural irregularity in the matter of selection.

When the cases came up for further consideration today, learned counsel for the Manager submits that the management is prepared to conduct a fresh selection in accordance with the then prevailing rules of procedure. Shri V.P.Sukumar, learned counsel for the petitioner in O.P.No.25872/2000 and learned counsel appearing for respondents 4 and 5 also submit that their clients have no objection in undergoing a fresh selection process. Of course, it is submitted by learned counsel for respondent No.4 that she was selected by the Committee and she had been working for the last six years.

Any how, in view of the intervening development, I am satisfied that interest of justice will be met only if the heartburn of the two lost out candidates, viz. Petitioner and respondent No.5 is avoided, particularly since primafacie it has been established that the selection process was not held in accordance with the then existing orders of the Government (Ext.P3). Learned counsel for the Manager submits that the selection process can be completed within six weeks from today.

> Appropriate steps shall be taken in this direction by the management and the process shall be completed in accordance with the then existing rules."

It is submitted by the learned counsel for the parties that the management has conducted fresh selection process after constituting a new selection committee comprising the Manager, the Principal of the Higher Secondary School and the Regional Deputy Director of Education, Ernakulam. It is also submitted that Smt. Lisa Kurian has been selected yet again since she was unanimously found to be the most eligible candidate among the three teachers in the fray.

Learned counsel appearing on behalf of Smt. Mini Thomas contends that the constitution of the new selection committee is yet again defective in the sense that instead of the Regional Deputy Director, Thiruvananthapuram, the Regional Deputy Director, Ernakulam has been nominated to the committee. Various other contentions have also been raised with regard to the merit of the selectee as compared to the better credentials of Smt. Mini Thomas.

The grievance of Smt. Mary K.V. Who has preferred Writ Petition No.28941/2006 challenging the above selection, is that her credentials have not been fully appreciated by the selection committee. It is pointed out by the learned counsel for the Manager that the Regional Deputy Director of Education, Ernakulam was nominated to the committee since the Regional Deputy Director, Thiruvananthapuram is the authority which has to approve the appointment. It was

only to avoid that procedural impediment that may arise in future, that the management had nominated the Regional Deputy Director, Ernakulam. In my view, the explanation offered by the Management appears to be plausible and reasonable. Whoever be the officer the management, in a sense, complied with the mandate of the then existing rules. Significantly, neither Smt. Mini Thomas nor Smt. Mary K.V.. has a case that the Regional Deputy Director of Education, Ernakulam had any bias or prejudice against them. The fact remains that the committee had unanimously decided to select Smt. Lisa Kurian as the most eligible candidate for appointment to the post. That being the position, I do not find any reason to interfere with the selection. So long as no vitiating circumstance has been brought on record in the matter of selection, I am afraid the jurisdiction under Article 226 of the Constitution is to be exercised. Learned counsel for Smt. Mini Thomas laying heavy emphasis on Ext.P3 circular with regard to the constitution of the selection committee, submits that the management has not constituted the new committee in terms of the stipulations contained in the said circular. I am unable to agree. In the peculiar facts and circumstances of this case, I do not deem it necessary to prolong the issue any further. The wisdom of the selection committee has to be accepted.

In the view of the matter, the challenge raised by Smt. Mini Thomas and Smt. Mary K.V.. has to be repelled. I do so. The department shall ensure that appropriate consequential orders for approval of appointment of Smt. Lisa Kurian

from the date of her initial appointment, viz. August 16, 2000 are passed and all service benefits shall be disbursed to her as expeditiously as possible, at any rate, within two months from the date of receipt of a copy of this judgment.

(A.K. Basheer)
Judge.

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